

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1355 Protection of Vulnerable Persons

**SPONSOR(S):** Judiciary Committee; Dorworth and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1816

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee	18 Y, 0 N, As CS	Smith	Havlicak
2) Health & Human Services Committee			
3) Education Committee			

### SUMMARY ANALYSIS

The bill expands the instances where a person is required to report child abuse by mandating a person to report known child abuse by anyone, not just child abuse by a caregiver.

The bill provides specific penalties for Florida educational institutions whose personnel fail to report certain child abuse taking place at the institution as defined.

The bill expands the scope of victims who are eligible to receive monetary relocation assistance to include a victim of sexual battery, and appropriates \$1.5 million from the General Revenue Fund for that purpose.

The bill increases criminal penalties by reclassifying certain violations involving sexual conduct with minors.

The bill will have an indeterminate fiscal impact on state and local governments.

The bill takes effect October 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

A study conducted in 2008 indicated that an estimated 4% to 16% of children are physically abused each year in high-income nations including the United States. Additionally, as many as 15% of children are neglected, and up to 10% of girls and 5% of boys suffer severe sexual abuse. Although it is difficult to measure, researchers believe that as few as 1 in 10 of those instances of abuse are actually confirmed by social-service agencies.<sup>1</sup> Recent national events have centered on issues with adults failing to report known instances of ongoing child abuse.

#### **Reporting Child Abuse**

##### **Current Situation**

Section 39.201, F.S., requires a person to report certain known or suspected instances of child abuse. Specifically, the law mandates that a person report knowledge or suspicion of child abuse if the person knows, or has reasonable cause to suspect:

- A child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare<sup>2</sup>; or
- That a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

Section 39.201(2), F.S., prescribes the method of reporting child abuse. Instances of child abuse as described by s. 39.201(1), F.S., must be made "immediately to the department's<sup>3</sup> central abuse hotline." If a person is required by s. 39.201, F.S., to report known or suspected child abuse and fails to do so, s. 39.205(1), F.S., makes it a first degree misdemeanor<sup>4</sup> if the person knowingly or willfully failed to report, or knowingly or willfully prevented another person from reporting such abuse.

##### **Effect of the Bill**

###### **Reporting Abuse by Any Person**

The bill expands the instances where a person is required to report child abuse by mandating the reporting of known child abuse<sup>5</sup> by *any person*, not just child abuse by a caregiver. The bill removes the definition for "other person responsible for the child's welfare" to conform.

###### **Educational Institutions**

The bill creates subsections 39.205(3) and (4), F.S.,<sup>6</sup> which provide penalties for Florida educational institutions whose personnel fail to report certain child abuse taking place at the institution. The bill subjects the institution to a \$1 million fine for each failure to report, and the loss of all state funding for 2 years.<sup>7</sup>

Specifically, these penalties apply to:

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<sup>1</sup> See Tiffany Sharples, *Most Child Abuse Goes Unreported*, Time Health, (Dec. 2, 2008), available at <http://www.time.com> (search "unreported child abuse" (last visited Jan. 19, 2012)).

<sup>2</sup> "Other person responsible for a child's welfare" includes many enumerated parties, including employees of a school or day care center. The definition exempts law enforcement officers and employees of municipal or county detention facilities acting in an official capacity, except as otherwise provided in the subsection. Section 39.01(47), F.S.

<sup>3</sup> "Department" means the Department of Children and Family Services.

<sup>4</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>5</sup> As defined by s. 39.201, F.S.

<sup>6</sup> Sections 39.205(3) and 39.205(4), F.S., already exist, but the bill renumbers those sections.

<sup>7</sup> "All state funding" includes the Florida Resident Access Grant Program.

- (1) Any Florida College System institution, state university, or nonpublic college, university, or school<sup>8</sup> whose administrators, faculty, or staff knowingly and willfully fail to report, or knowingly and willfully prevent another from reporting known or suspected child abuse, abandonment, or neglect committed on the property of the institution, university, college, or school, or during an event or function sponsored by the institution, university, college, or school.
- (2) Any Florida College System institution, state university, or nonpublic college, university, or school<sup>9</sup> whose law enforcement agency fails to transmit to prosecutorial authorities any report of known or suspected child abuse, abandonment, or neglect committed on the property of the institution, university, college, or school, or during an event or function sponsored by the institution, university, college, or school.

## **Relocation Assistance for Victims**

### **Current Situation**

#### **Relocation Assistance for Victims of Domestic Violence**

Section 960.198, F.S., authorizes the Department of Legal Affairs (“DLA”) to award monetary payment to a victim of domestic violence in order to provide relocation assistance, under certain conditions. Specifically, the law authorizes DLA to award a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment:

- a) A one-time payment not exceeding \$1,500 on any one claim; and
- b) A lifetime maximum of \$3,000.

Certain preconditions must be met before DLA may grant an award:

- a) There must be proof that a domestic violence offense was committed;
- b) The domestic violence offense must be reported to the proper authorities;
- c) The victim’s need for assistance must be certified by a domestic violence center in Florida; and
- d) The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.

### **Effect of the Bill**

#### **Relocation Assistance for Victims of Sexual Battery**

The bill expands the scope of victims who are eligible to receive monetary relocation assistance from DLA to include victims of sexual battery.

The bill authorizes DLA to award a victim of sexual battery<sup>10</sup> who needs relocation assistance:

- a) A one-time payment not exceeding \$1,500 on any one claim; and
- b) A lifetime maximum of \$3,000.

Certain preconditions must be met before DLA may grant an award:

- a) There must be proof that a sexual battery offense was committed.
- b) The sexual battery offense must be reported to the proper authorities.
- c) The victim’s need for assistance must be certified by a certified rape crisis center in this state.
- d) The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.

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<sup>8</sup> As defined in ss. 1000.21 or 1005.02, F.S.

<sup>9</sup> *Id.*

<sup>10</sup> As defined in s. 794.011, F.S.

- e) The act of sexual battery must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.

### Funding

The bill includes a relocation assistance fund for victims of sexual battery that is separate from the relocation assistance fund for victims of domestic violence. The bill appropriates \$1.5 million in nonrecurring funds from the General Revenue Fund to DLA for the 2012-2013 state fiscal year to be used for that fund.

The bill specifies that a particular victim may not be awarded money from both the domestic violence fund and the sexual battery fund for assistance needs arising from the same incident.

## **Reclassification of Prostitution Crimes Involving Minors**

### **Current Situation**

Florida law presently prohibits conduct involving prostitution under chapter 796, F.S.

- Causing a Minor to Become Involved With Prostitution. Sections 796.03 and 796.035, F.S., prohibit a person from causing a minor to become involved in prostitution and other sexual activity. Specifically, under s. 796.03, F.S., it is a second degree felony<sup>11</sup> for a person to procure for prostitution, or cause to be prostituted, any person who is under the age of 18.  
Under s. 796.035, F.S., it is a first degree felony<sup>12</sup> for any parent, legal guardian, or other person having custody or control of a minor, to sell or otherwise transfer custody or control of such minor, or offer to sell or otherwise transfer custody of the minor with knowledge that the minor will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking as a consequence of the sale or transfer.
- Forcing, Compelling, or Coercing Prostitution. Under s. 796.04, F.S, it is a third degree felony<sup>13</sup> for a person to force, compel, or coerce another to become a prostitute.
- Sex Trafficking. Under s. 796.045, F.S, it is a second degree felony<sup>14</sup> for a person to recruit, entice, harbor, transport, provide, or obtain by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution. It is a first degree felony<sup>15</sup> if the offense is committed against a person under the age of 14 or if the offense results in death.
- Deriving Support from the Proceeds of Prostitution. Under s. 796.05, F.S., it is a third degree felony for a person who knows or has reasonable belief that another is engaged in prostitution to live or derive support or maintenance from what is believed to be the earnings or proceeds of such person's prostitution.
- Renting Space to be Used for Lewdness, Assignment, or Prostitution. Under s. 796.06, F.S., it is a second degree misdemeanor for the first violation, and a first degree misdemeanor for a subsequent violation, for a person to let or rent any place, structure, or part thereof, trailer or other conveyance with knowledge that it will be used for the purpose of lewdness, assignment, or prostitution.
- Definitions
  - "Assignment" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.<sup>16</sup>

<sup>11</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>12</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>13</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>14</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>15</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>16</sup> Section 796.07, F.S.

- “*Lewdness*” means any indecent or obscene act.<sup>17</sup>
- “*Prostitution*” means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.<sup>18</sup>
- “*Sexual activity*” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.<sup>19</sup>

### **Effect of the Bill**

The bill creates s. 796.036, F.S., which provides for reclassification of certain violations involving minors.<sup>20</sup> Specifically, the bill provides for reclassification of violations “in which a minor engages in prostitution, lewdness, assignation, sexual conduct, or other conduct as defined in or prohibited [by chapter 796], but the minor is not the person charged with the violation.” The bill provides for such reclassification as follows:

- A second degree misdemeanor becomes a first degree misdemeanor;
- A first degree misdemeanor becomes a third degree felony;
- A third degree felony becomes a second degree felony;
- A second degree felony becomes a first degree felony;
- A first degree felony becomes a life felony.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 39.01, F.S., relating to definitions.

**Section 2.** Amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

**Section 3.** Amends s. 39.205, F.S., relating to penalties relating to reporting of child abuse, abandonment, or neglect.

**Section 4.** Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.

**Section 5.** Creates s. 796.036, F.S., relating to reclassification of violations involving minors.

**Section 6.** Amends s. 960.198, F.S., relating to relocation assistance for victims of domestic violence.

**Section 7.** Creates s. 960.199, F.S., relating to relocation assistance for victims of sexual battery.

**Section 8.** Appropriates \$1.5 million from the General Revenue Fund to the Department of Legal Affairs.

**Section 9.** Provides that the act shall take effect October 1, 2012.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> The new section created by the bill specifically states it does not apply to violations of ss. 796.03 and 796.035, F.S., presumably because those sections already apply to prohibited conduct involving minors.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

**Relocation Assistance**

The bill authorizes DLA (under the Office of the Attorney General) to award a monetary sum of \$1,500<sup>21</sup> to a victim of sexual battery<sup>22</sup> once certain preconditions are met. The 2010 Crime in Florida Annual Report indicated that there were 9,885 Forcible Sex Offenses. However, it is unknown how many victims would qualify or request relocation assistance.

The bill funds relocation assistance awards by appropriating \$1.5 million in nonrecurring funds from the General Revenue Fund to the DLA for the 2012-2013 state fiscal year.

**Educational Institutions**

The bill provides penalties for Florida educational institutions whose personnel or law enforcement agencies fail to report certain child abuse taking place at the institution. The bill subjects the institution to a \$1 million fine for each failure to report, and the loss of all state funding for 2 years.

**Prison Beds**

The bill increases penalties for certain prostitution related criminal offenses. A request has been made to the Criminal Justice Impact Conference to provide an estimate of any fiscal impact on state prison beds.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill increases penalties for certain prostitution related criminal offenses. It is unknown what impact this will have on local jail beds.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The provisions of the bill that do not address criminal laws do not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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<sup>21</sup> With a lifetime maximum of \$3,000.

<sup>22</sup> As defined in s. 794.011, F.S.

The provisions of the bill addressing criminal provisions appear to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2012, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment creates a relocation assistance fund for victims of sexual battery and appropriates \$1.5 million from the General Revenue Fund for that purpose.

The analysis is drafted to the committee substitute as passed by the Judiciary Committee.